

106TH CONGRESS
1ST SESSION

S. 476

To enhance and protect retirement savings.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 1999

Mr. SCHUMER introduced the following bill; which was read twice and referred
to the Committee on Finance

A BILL

To enhance and protect retirement savings.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Comprehensive Pension and Retirement Security Act of
6 1999”.

7 (b) TABLE OF CONTENTS.—

Sec. 1. Short title.

TITLE I—RESTRICTIONS ON LOANS FROM QUALIFIED
RETIREMENT PLANS

Sec. 101. Qualified employer plans prohibited from making loans through credit
cards and other intermediaries.

Sec. 102. Loans from qualified employer plans treated as distributions unless used to purchase a first home, to pay higher education or financially devastating medical expenses, or during periods of unemployment.

TITLE II—PROMOTION OF AVAILABILITY OF PRIVATE PENSIONS UPON RETIREMENT

Sec. 201. Availability of defined contribution plan option for participants in defined benefit plans.

Sec. 202. Timely investment of plan contributions.

Sec. 203. Increase in penalty for early distributions from pension plans.

TITLE III—GROUP HEALTH PLANS

Sec. 301. Advance notice of material reductions in covered services under group health plans.

TITLE IV—APPLICATION OF CERTAIN PROHIBITED TRANSACTIONS RULES FOR 401(k) PLANS

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1 **TITLE I—RESTRICTIONS ON** 2 **LOANS FROM QUALIFIED RE-** 3 **TIREMENT PLANS**

4 **SEC. 101. QUALIFIED EMPLOYER PLANS PROHIBITED FROM** 5 **MAKING LOANS THROUGH CREDIT CARDS** 6 **AND OTHER INTERMEDIARIES.**

7 (a) IN GENERAL.—Subsection (a) of section 401 of
8 the Internal Revenue Code of 1986 is amended by adding
9 after paragraph (34) the following new paragraph:

10 “(35) PROHIBITION OF LOANS THROUGH CRED-
11 IT CARDS AND OTHER INTERMEDIARIES.—A trust
12 shall not constitute a qualified trust under this sec-
13 tion if the plan makes any loan to any beneficiary
14 under the plan through the use of any credit card
15 or any other intermediary.”.

16 (b) EFFECTIVE DATE.—The amendment made by
17 subsection (a) shall apply to plan years beginning after
18 the date of the enactment of this Act.

1 **SEC. 102. LOANS FROM QUALIFIED EMPLOYER PLANS**
 2 **TREATED AS DISTRIBUTIONS UNLESS USED**
 3 **TO PURCHASE A FIRST HOME, TO PAY HIGH-**
 4 **ER EDUCATION OR FINANCIALLY DEVASTAT-**
 5 **ING MEDICAL EXPENSES, OR DURING PERI-**
 6 **ODS OF UNEMPLOYMENT.**

7 (a) IN GENERAL.—Subsection (p) of section 72 of the
 8 Internal Revenue Code of 1986 (relating to loans treated
 9 as distributions) is amended by redesignating paragraphs
 10 (3), (4), and (5) as paragraphs (4), (5), and (6), respec-
 11 tively, and by inserting after paragraph (2) the following
 12 new paragraph:

13 “(3) EXCEPTION ONLY TO APPLY TO CERTAIN
 14 LOANS.—Paragraph (2) shall apply to any loan only
 15 if such loan is—

16 “(A) a qualified first-time homebuyer loan
 17 (as defined in paragraph (7)),

18 “(B) a qualified higher education loan (as
 19 defined in paragraph (8)),

20 “(C) a qualified medical expense loan (as
 21 defined in paragraph (9)), or

22 “(D) a qualified unemployment loan (as
 23 defined in paragraph (10)).”.

24 (b) DEFINITIONS.—Subsection (p) of section 72 of
 25 such Code is amended by adding at the end the following
 26 new paragraphs:

1 “(7) QUALIFIED FIRST-TIME HOMEBUYER
2 LOAN.—

3 “(A) IN GENERAL.—For purposes of para-
4 graph (3), the term ‘qualified first-time home-
5 buyer loan’ means any loan received by an indi-
6 vidual to the extent the amount of the loan is
7 used within a reasonable period to pay qualified
8 acquisition costs with respect to a principal res-
9 idence of a first-time homebuyer who is such in-
10 dividual, the spouse of such individual, or any
11 child, grandchild, or ancestor of such individual
12 or the individual’s spouse.

13 “(B) FIRST-TIME HOMEBUYER; DATE OF
14 ACQUISITION; PRINCIPAL RESIDENCE; QUALI-
15 FIED ACQUISITION COSTS.—For purposes of
16 this paragraph, the terms ‘first-time home-
17 buyer’, ‘date of acquisition’, ‘principal resi-
18 dence’, and ‘qualified acquisition costs’ have the
19 same meaning as when such terms are used in
20 subsection (t)(8).

21 “(8) QUALIFIED HIGHER EDUCATION LOAN.—
22 For purposes of paragraph (3)—

23 “(A) IN GENERAL.—The term ‘qualified
24 higher education loan’ means any loan received
25 by an individual to the extent the amount of the

loan is used within a reasonable period to pay qualified higher education expenses (as defined in section 529(e)(3)) for education furnished to—

“(i) the individual,

“(ii) the individual’s spouse, or

“(iii) any child (as defined in section 151(c)(3)), grandchild, or ancestor of the individual or the individual’s spouse,

at an eligible educational institution (as defined in section 529(e)(5)).

“(B) COORDINATION WITH SAVINGS BOND PROVISIONS.—The amount of the qualified higher education expenses (as so defined) for any taxable year shall be reduced by any amount excludable from gross income under section 135.

“(9) QUALIFIED MEDICAL EXPENSE LOAN.—

The term ‘qualified medical expense loan’ means any loan received by an individual to the extent the amount of the loan does not exceed the amount allowable as a deduction under section 213 to the individual for amounts paid during the taxable year for medical care (determined without regard to whether

1 the taxpayer itemizes deductions for such taxable
 2 year).

3 “(10) QUALIFIED UNEMPLOYMENT LOAN.—The
 4 term ‘qualified unemployment loan’ means any loan
 5 to an individual after separation from employment,
 6 if—

7 “(A) such individual has received unem-
 8 ployment compensation for 12 consecutive
 9 weeks under any Federal or State unemploy-
 10 ment compensation law by reason of such sepa-
 11 ration, and

12 “(B) such loan is received during any tax-
 13 able year during which such unemployment
 14 compensation is paid or the succeeding taxable
 15 year.

16 To the extent provided in regulations, a self-em-
 17 ployed individual shall be treated as meeting the re-
 18 quirements of subparagraph (A) if, under Federal or
 19 State law, the individual would have received unem-
 20 ployment compensation but for the fact the individ-
 21 ual was self-employed.”.

22 (c) EFFECTIVE DATE.—The amendments made by
 23 this section shall apply to loans made after the date of
 24 the enactment of this Act with respect to expenses paid
 25 after such date (in tax years ending after such date).

1 **TITLE II—PROMOTION OF AVAIL-**
 2 **ABILITY OF PRIVATE PEN-**
 3 **SIONS UPON RETIREMENT**

4 **SEC. 201. AVAILABILITY OF DEFINED CONTRIBUTION PLAN**
 5 **OPTION FOR PARTICIPANTS IN DEFINED**
 6 **BENEFIT PLANS.**

7 (a) AMENDMENT TO THE EMPLOYEE RETIREMENT
 8 INCOME SECURITY ACT OF 1974.—Section 206 of the
 9 Employee Retirement Income Security Act of 1974 (29
 10 U.S.C. 1056) is amended by adding at the end the follow-
 11 ing new subsection:

12 “(g) AVAILABILITY OF DEFINED CONTRIBUTION
 13 PLAN OPTION FOR PARTICIPANTS IN DEFINED BENEFIT
 14 PLANS.—

15 “(1) IN GENERAL.—Each defined benefit plan
 16 to which an employer makes contributions shall pro-
 17 vide (in such form and manner as may be provided
 18 in regulations prescribed jointly by the Secretary
 19 and the Secretary of the Treasury) for an oppor-
 20 tunity for each participant employed by such em-
 21 ployer to elect, in lieu of coverage under the defined
 22 benefit plan and before any election made by the em-
 23 ployee under such plan pursuant to subsection (c),
 24 coverage under a defined contribution plan main-
 25 tained in whole or in part by the participant’s em-

1 ployer. An employer making contributions to a de-
 2 fined benefit plan shall maintain for his employees
 3 a defined contribution plan to the extent necessary
 4 to provide for coverage under such defined contribu-
 5 tion plan pursuant to elections under this sub-
 6 section.

7 “(2) REQUIRED LEVEL OF CONTRIBUTIONS.—
 8 The requirements of paragraph (1) shall not be
 9 treated as met unless the defined contribution plan
 10 with respect to which an election is made under
 11 paragraph (1) provides for contributions (other than
 12 employee contributions (if any)) at least equivalent
 13 to the contributions (other than employee contribu-
 14 tions (if any)) provided for under the terms of the
 15 defined benefit plan.

16 “(3) REQUIRED ELECTION PERIOD.—The re-
 17 quirements of paragraph (1) shall not be treated as
 18 met unless the defined benefit plan provides that an
 19 election under paragraph (1) may be made at any
 20 time during the 90-day period beginning with the
 21 later of—

22 “(A) the commencement of the first plan
 23 year to which this subsection applies, or

24 “(B) the commencement of the employee’s
 25 service under the plan.”.

1 (b) AMENDMENTS TO THE INTERNAL REVENUE
 2 CODE OF 1986.—Subsection (a) of section 401 of the In-
 3 ternal Revenue Code of 1986 (relating to requirements for
 4 qualification), as amended by section 101, is amended by
 5 inserting after paragraph (35) the following new para-
 6 graph:

7 “(36) AVAILABILITY OF DEFINED CONTRIBU-
 8 TION PLAN OPTION FOR PARTICIPANTS IN DEFINED
 9 BENEFIT PLANS.—

10 “(A) IN GENERAL.—A trust forming a
 11 part of a defined benefit plan to which an em-
 12 ployer makes contributions shall not constitute
 13 a qualified trust under this section unless—

14 “(i) the plan provides (in such form
 15 and manner as may be provided in regula-
 16 tions prescribed jointly by the Secretary
 17 and the Secretary of Labor) for an oppor-
 18 tunity for each participant employed by
 19 such employer to elect, in lieu of coverage
 20 under the defined benefit plan and before
 21 any election made by the employee under
 22 such plan pursuant to section 417, cov-
 23 erage under a defined contribution plan
 24 maintained in whole or in part by the par-
 25 ticipant’s employer, and

1 “(ii) the defined benefit plan provides
2 that each employer making contributions
3 to the plan maintains for his employees a
4 defined contribution plan to the extent nec-
5 essary to provide for coverage under such
6 defined contribution plan pursuant to elec-
7 tions under this paragraph.

8 “(B) REQUIRED LEVEL OF CONTRIBU-
9 TIONS.—The requirements of subparagraph (A)
10 shall not be treated as met unless the defined
11 contribution plan with respect to which an elec-
12 tion is made under subparagraph (A) provides
13 for contributions (other than employee contribu-
14 tions (if any)) at least equivalent to the con-
15 tributions (other than employee contributions
16 (if any)) provided for under the terms of the
17 defined benefit plan.

18 “(C) REQUIRED ELECTION PERIOD.—The
19 requirements of subparagraph (A) shall not be
20 treated as met unless the defined benefit plan
21 provides that an election under subparagraph
22 (A) may be made at any time during the 90-
23 day period beginning with the later of—

1 “(i) the commencement of the first
2 plan year to which this paragraph applies,
3 or

4 “(ii) the commencement of the em-
5 ployee’s service under the plan.”.

6 (c) EFFECTIVE DATES.—

7 (1) GENERAL RULE.—The amendments made
8 by this section shall apply to plan years beginning
9 after December 31, 1999.

10 (2) SPECIAL RULE FOR COLLECTIVE BARGAIN-
11 ING AGREEMENTS.—In the case of a defined benefit
12 plan maintained pursuant to one or more collective
13 bargaining agreements between employee organiza-
14 tions and one or more employers ratified before the
15 date of the enactment of this Act, the amendments
16 made by this section shall not apply to plan years
17 beginning before the later of—

18 (A) the date on which the last of the col-
19 lective bargaining agreements relating to the
20 plan terminates (determined without regard to
21 any extension thereof agreed to after the date
22 of the enactment of this Act), or

23 (B) January 1, 2001.

24 For purposes of subparagraph (A), any plan amend-
25 ment made pursuant to a collective bargaining

1 agreement relating to the plan which amends the
 2 plan solely to conform to any requirement added by
 3 this section shall not be treated as a termination of
 4 such collective bargaining agreement.

5 **SEC. 202. TIMELY INVESTMENT OF PLAN CONTRIBUTIONS.**

6 (a) IN GENERAL.—Section 404 of the Employee Re-
 7 tirement Income Security Act of 1974 (29 U.S.C. 1104)
 8 is amended by adding at the end the following new sub-
 9 section:

10 “(e) Any failure, by a person who is a fiduciary with
 11 respect to a pension plan and who has discretionary au-
 12 thority respecting investment of amounts contributed to
 13 the plan, to ensure that amounts contributed to the plan
 14 are invested, in accordance with the terms of the plan and
 15 this title, before 15 days after the calendar month in which
 16 such amounts are received by the plan, shall be treated
 17 as a breach of fiduciary duties under the plan.”.

18 (b) EFFECTIVE DATE.—The amendment made by
 19 subsection (a) shall apply with respect to plan years begin-
 20 ning on December 31, 1999.

21 **SEC. 203. INCREASE IN ADDITIONAL TAX FOR EARLY DIS-**
 22 **TRIBUTIONS FROM PENSION PLANS.**

23 (a) IN GENERAL.—Paragraph (1) of section 72(t) of
 24 the Internal Revenue Code of 1986 (relating to imposition
 25 of additional tax) is amended to read as follows:

1 “(1) IMPOSITION OF ADDITIONAL TAX.—If any
 2 portion of an amount a taxpayer receives from a
 3 qualified retirement plan (as defined in section
 4 4974(c)) is (without regard to this paragraph) in-
 5 cludible in gross income—

6 “(A) the taxpayer’s tax under this chapter
 7 for the taxable year in which such amount is re-
 8 ceived shall be increased by an amount equal to
 9 such portion, and

10 “(B) such portion shall not be includible in
 11 gross income.”

12 (b) CONFORMING AMENDMENT.—Paragraph (6) of
 13 section 72(t) of such Code is repealed.

14 (c) EFFECTIVE DATE.—The amendment made by
 15 this section shall apply to distributions after December 31,
 16 1999.

17 **TITLE III—GROUP HEALTH** 18 **PLANS**

19 **SEC. 301. ADVANCE NOTICE OF MATERIAL REDUCTIONS IN** 20 **COVERED SERVICES UNDER GROUP HEALTH** 21 **PLANS.**

22 (a) ADVANCE NOTICE.—

23 (1) IN GENERAL.—Section 104(b)(1) of the
 24 Employee Retirement Income Security Act of 1974
 25 is amended—

1 (A) by redesignating subparagraphs (A)
 2 and (B) as clauses (i) and (ii), respectively,

3 (B) by striking “(1) The administrator”
 4 and inserting “(1)(A) The administrator”,

5 (C) by striking “The administrator” the
 6 second place it appears and inserting the follow-
 7 ing:

8 “(B) The administrator”,

9 (D) by striking “If there is a modification”
 10 and inserting the following:

11 “(C) If there is a modification”, and

12 (E) by adding at the end the following new
 13 subparagraph:

14 “(D) Notwithstanding subparagraph (C), if there is
 15 a modification or change described in section 102(a)(1)
 16 in covered services or benefits provided in the case of a
 17 group health plan (as defined in section 706(a)(1)) relat-
 18 ing to retiree health benefits, a summary description of
 19 such modification or change shall be furnished to partici-
 20 pants, beneficiaries, and the Secretary not later than 180
 21 days before the effective date of the modification or
 22 change. In any case in which an individual first becomes
 23 a participant under a group health plan during any such
 24 180-day period with respect to such a modification or
 25 change or (in the case of any other beneficiary under the

1 plan) first receives benefits under the plan during such
 2 180-day period, the requirements of the preceding sen-
 3 tence may be met by providing the summary description
 4 of such modification or change not later than the date on
 5 which such individual first becomes a participant or such
 6 other beneficiary first receives benefits under the plan.”.

7 (2) DETERMINATION BY SECRETARY.—Section
 8 104 of the Employee Retirement Income Security
 9 Act of 1974 (29 U.S.C. 1024) is further amended by
 10 redesignating subsection (d) as subsection (e) and by
 11 inserting after subsection (c) the following new sub-
 12 section:

13 “(d) A change or modification in covered services or
 14 benefits provided in the case of a group health plan relat-
 15 ing to retiree health benefits that is subject to the require-
 16 ments of subsection (b)(1)(D) may not take effect until
 17 after the Secretary determines that such change or modi-
 18 fication does not violate the plan, including collective bar-
 19 gaining agreements.”.

20 (3) CIVIL PENALTY.—Section 502(c)(1) of such
 21 Act (29 U.S.C. 1132(c)(1)) is amended by striking
 22 “or section 101(e)(1)” and inserting “, section
 23 101(e)(1), or section 104(b)(1)(D)”.

24 (b) ENFORCEMENT.—

1 (1) REQUIREMENTS.—Section 4980B of the In-
 2 ternal Revenue Code of 1986 is amended by redesign-
 3 nating subsection (g) as subsection (h) and by in-
 4 serting after subsection (f) the following new sub-
 5 section:

6 “(g) NOTICE OF CHANGE OR MODIFICATION IN
 7 HEALTH BENEFITS.—

8 “(1) IN GENERAL.—A group health plan meets
 9 the requirements of this subsection if—

10 “(A) the plan sponsor complies with sec-
 11 tion 104(b)(1)(D) of the Employee Retirement
 12 Income Security Act of 1974 (relating to pro-
 13 viding advance notice of modification or change
 14 in retiree health benefits provided under a
 15 group health plan), and

16 “(B) such modification or change in retiree
 17 health benefits in a group health plan takes ef-
 18 fect after the Secretary of Labor makes the de-
 19 termination required by section 104(d) of such
 20 Act that such change or modification does not
 21 violate the plan, including collective bargaining
 22 agreements.

23 “(2) NONCOMPLIANCE PERIOD.—For the pur-
 24 poses of subsection (b), the noncompliance period
 25 with respect to this subsection shall be determined

1 without regard to paragraph (2)(B)(ii) of subsection
2 (b).”

3 (2) CONFORMING AMENDMENTS.—

4 (A) Subsection (a) of section 4980B of
5 such Code is amended by striking “subsection
6 (f)” and inserting “subsections (f) and (g)”.

7 (B) Clause (iv)(II) of section
8 4980B(f)(2)(B) of such Code is amended by
9 striking “subsection (g)(1)(D)” and inserting
10 “subsection (h)(1)(D)”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply with respect to plan years ending
13 after January 1, 1999.

14 **TITLE IV—APPLICATION OF CER-**
15 **TAIN PROHIBITED TRANS-**
16 **ACTIONS RULES FOR 401(k)**
17 **PLANS**

18 **SEC. 401. CERTAIN PROHIBITED TRANSACTIONS APPLIED**
19 **TO 401(k) PLANS.**

20 (a) IN GENERAL.—Paragraph (3) of section 407(d)
21 of the Employee Retirement Income Security Act of 1974
22 (29 U.S.C. 1107(d)) is amended by adding at the end the
23 following new sentence: “Such term also excludes an indi-
24 vidual account plan that includes a qualified cash or de-
25 ferred arrangement described in section 401(k) of the In-

1 ternal Revenue Code of 1986, if such plan, together with
2 all other individual account plans maintained by the em-
3 ployer, owns more than 10 percent of the assets owned
4 by all pension plans maintained by the employer. For pur-
5 poses of the preceding sentence, the assets of such plan
6 subject to participant control (within the meaning of sec-
7 tion 404(c)) shall not be taken into account.”.

8 (b) EFFECTIVE DATE; TRANSITION RULE.—

9 (1) EFFECTIVE DATE.—Except as provided in
10 paragraph (2), the amendment made by this section
11 shall apply to plans on and after the date of the en-
12 actment of this Act.

13 (2) TRANSITION RULE FOR PLANS HOLDING
14 EXCESS SECURITIES OR PROPERTY.—In the case of
15 a plan which on the date of the enactment of this
16 Act has holdings of employer securities and employer
17 real property (as defined in section 407(d) of the
18 Employee Retirement Income Security Act of 1974
19 (29 U.S.C. 1107(d)) in excess of the amount speci-
20 fied in such section 407, the amendment made by
21 this section shall apply to any acquisition of such se-
22 curities and property on or after such date of enact-
23 ment, but shall not apply to the specific holdings
24 which constitute such excess during the period of
25 such excess.

1 **TITLE V—RETIREMENT SAVINGS**

2 **AND SECURITY**

3 **SEC. 500. AMENDMENT OF ERISA.**

4 Except as otherwise expressly provided, whenever in
 5 this title an amendment or repeal is expressed in terms
 6 of an amendment to, or repeal of, a section or other provi-
 7 sion, the reference shall be considered to be made to a
 8 section or other provision of the Employee Retirement In-
 9 come Security Act of 1974.

10 **Subtitle A—Portability**

11 **SEC. 501. MISSING PARTICIPANTS.**

12 (a) IN GENERAL.—Section 4050 (29 U.S.C. 1350)
 13 is amended by redesignating subsection (c) as subsection
 14 (e) and by inserting after subsection (b) the following new
 15 subsections:

16 “(c) MULTIEMPLOYER PLANS.—The corporation
 17 shall prescribe rules similar to the rules in subsection (a)
 18 for multiemployer plans covered by this title that termi-
 19 nate under section 4041A.

20 “(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

21 “(1) TRANSFER TO CORPORATION.—The plan
 22 administrator of a plan described in paragraph (4)
 23 may elect to transfer a missing participant’s benefits
 24 to the corporation upon termination of the plan.

1 “(2) INFORMATION TO THE CORPORATION.—To
2 the extent provided in regulations, the plan adminis-
3 trator of a plan described in paragraph (4) shall,
4 upon termination of the plan, provide the corpora-
5 tion information with respect to benefits of a miss-
6 ing participant if the plan transfers such benefits—

7 “(A) to the corporation, or

8 “(B) to an entity other than the corpora-
9 tion or a plan described in paragraph (4)(B)(ii).

10 “(3) PAYMENT BY THE CORPORATION.—If ben-
11 efits of a missing participant were transferred to the
12 corporation under paragraph (1), the corporation
13 shall, upon location of the participant or beneficiary,
14 pay to the participant or beneficiary the amount
15 transferred (or the appropriate survivor benefit)
16 either—

17 “(A) in a single sum (plus interest), or

18 “(B) in such other form as is specified in
19 regulations of the corporation.

20 “(4) PLANS DESCRIBED.—A plan is described
21 in this paragraph if—

22 “(A) the plan is a pension plan (within the
23 meaning of section 3(2))—

1 “(i) to which the provisions of this
 2 section do not apply (without regard to
 3 this subsection), and

4 “(ii) which is not a plan described in
 5 paragraphs (2) through (11) of section
 6 4021(b), and

7 “(B) at the time the assets are to be dis-
 8 tributed upon termination, the plan—

9 “(i) has missing participants, and

10 “(ii) has not provided for the transfer
 11 of assets to pay the benefits of all missing
 12 participants to another pension plan (with-
 13 in the meaning of section 3(2)).

14 “(5) CERTAIN PROVISIONS NOT TO APPLY.—
 15 Subsections (a)(1) and (a)(3) shall not apply to a
 16 plan described in paragraph (4).”.

17 (b) CONFORMING AMENDMENTS.—

18 (1) Section 206(f) (29 U.S.C. 1056(f)) is
 19 amended—

20 (A) by striking “title IV” and inserting
 21 “section 4050”, and

22 (B) by striking “the plan shall provide
 23 that”.

24 (2) Section 401(a)(34) of the Internal Revenue
 25 Code of 1986 (relating to benefits of missing partici-

1 pants on plan termination) is amended by striking
 2 “title IV” and inserting “section 4050”.

3 (c) EFFECTIVE DATE.—The amendments made by
 4 this section shall apply to distributions made after final
 5 regulations implementing subsections (c) and (d) of sec-
 6 tion 4050 of the Employee Retirement Income Security
 7 Act of 1974 (as added by subsection (a)), respectively, are
 8 prescribed.

9 **Subtitle B—Enhanced Security**

10 **CHAPTER 1—GENERAL PROVISIONS**

11 **SEC. 511. MULTIEMPLOYER PLAN BENEFITS GUARANTEED.**

12 (a) IN GENERAL.—Section 4022A(c) (29 U.S.C.
 13 1322a(c)) is amended—

14 (1) by striking “\$5” each place it appears in
 15 paragraph (1) and inserting “\$11”,

16 (2) by striking “\$15” in paragraph (1) and in-
 17 serting “\$33”, and

18 (3) by striking paragraphs (2), (5), and (6) and
 19 by redesignating paragraphs (3) and (4) as para-
 20 graphs (2) and (3), respectively.

21 (b) EFFECTIVE DATE.—The amendments made by
 22 this section shall apply to any multiemployer plan that has
 23 not received financial assistance (within the meaning of
 24 section 4261 of the Employee Retirement Income Security

1 Act of 1974) within the 1-year period ending on the date
 2 of the enactment of this Act.

3 **SEC. 512. REVERSION REPORT.**

4 (a) IN GENERAL.—Section 4008 (29 U.S.C. 1308)
 5 is amended by adding at the end the following new sub-
 6 section:

7 “(b) REVERSION REPORT.—As soon as practicable
 8 after the close of each fiscal year, the Secretary of Labor
 9 (acting in the Secretary’s capacity as chairman of the cor-
 10 poration’s board) shall transmit to the President and the
 11 Congress a report providing information on plans from
 12 which residual assets were distributed to employers pursu-
 13 ant to section 4044(d).”

14 (b) CONFORMING AMENDMENT.—Section 4008 (29
 15 U.S.C. 1308) is amended by striking “SEC. 4008.” and
 16 inserting “SEC. 4008. (a) ANNUAL REPORT.—”.

17 (c) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply to fiscal years beginning after Sep-
 19 tember 30, 1999.

20 **SEC. 513. FULL FUNDING LIMITATION FOR MULTIEM-**
 21 **PLOYER PLANS.**

22 (a) FULL-FUNDING LIMITATION.—Section
 23 302(c)(7)(C) (29 U.S.C. 1082(c)(7)(C)) is amended—

24 (1) by inserting “or in the case of a multiem-
 25 ployer plan,” after “paragraph (6)(B),” and

1 (2) by inserting “AND MULTIEMPLOYER PLANS”
 2 after “PARAGRAPH (6)(B)” in the heading thereof.

3 (b) VALUATION.—Section 302(c)(9) (29 U.S.C.
 4 1082(c)(9)) is amended by inserting “(3 years in the case
 5 of a multiemployer plan)” after “year”.

6 (c) EFFECTIVE DATE.—The amendments made by
 7 this section shall apply to plan years beginning after De-
 8 cember 31, 1998.

9 **SEC. 514. PROHIBITED TRANSACTIONS.**

10 (a) IN GENERAL.—Section 502(i) (29 U.S.C.
 11 1132(i)) is amended by striking “5 percent” and inserting
 12 “10 percent”.

13 (b) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply to prohibited transactions occur-
 15 ring after the date of enactment of this Act.

16 **SEC. 515. SUBSTANTIAL OWNER BENEFITS.**

17 (a) MODIFICATION OF PHASE-IN OF GUARANTEE.—
 18 Subparagraphs (B) and (C) of section 4022(b)(5) (29
 19 U.S.C. 1322(b)(5)) are amended to read as follows:

20 “(B) For purposes of this title, the term ‘majority
 21 owner’ has the same meaning as substantial owner under
 22 subparagraph (A), except that subparagraph (A) shall be
 23 applied by substituting ‘50 percent or more’ for ‘more
 24 than 10 percent’ each place it appears.

1 “(C) In the case of a participant who is a majority
2 owner, the amount of benefits guaranteed under this sec-
3 tion shall not exceed the product of—

4 “(i) a fraction (not to exceed 1) the numerator
5 of which is the number of years from the later of the
6 effective date or the adoption date of the plan to the
7 termination date, and the denominator of which is
8 30, and

9 “(ii) the amount of the majority owner’s month-
10 ly benefits guaranteed under subsection (a) (as lim-
11 ited by paragraph (3) of this subsection).”.

12 (b) MODIFICATION OF ALLOCATION OF ASSETS.—

13 (1) Section 4044(a)(4)(B) (29 U.S.C.
14 1344(a)(4)(B)) is amended by striking “section
15 4022(b)(5)” and inserting “section 4022(b)(5)(C)”.

16 (2) Section 4044(b) (29 U.S.C. 1344(b)) is
17 amended—

18 (A) by striking “(5)” in paragraph (2) and
19 inserting “(4), (5),” and

20 (B) by redesignating paragraphs (3)
21 through (6) as paragraphs (4) through (7), re-
22 spectively, and by inserting after paragraph (2)
23 the following new paragraph:

24 “(3) If assets available for allocation under
25 paragraph (4) of subsection (a) are insufficient to

1 satisfy in full the benefits of all individuals who are
 2 described in that paragraph, the assets shall be allo-
 3 cated first to benefits described in subparagraph (A)
 4 of that paragraph. Any remaining assets shall then
 5 be allocated to subparagraph (B). If assets allocated
 6 to subparagraph (B) are insufficient to satisfy in full
 7 the benefits in that subparagraph, the assets shall
 8 be allocated pro rata among individuals on the basis
 9 of the present value (as of the termination date) of
 10 their respective benefits described in that subpara-
 11 graph.”.

12 (c) EFFECTIVE DATE.—The amendments made by
 13 this section shall apply to plan terminations—

14 (1) under section 4041(c) of the Employee Re-
 15 tirement Income Security Act of 1974 (29 U.S.C.
 16 1341(c)) with respect to which notices of intent to
 17 terminate are provided under section 4041(a)(2) of
 18 such Act (29 U.S.C. 1341(a)(2)) on or after the
 19 date of the enactment of this Act, or

20 (2) under section 4042 of such Act (29 U.S.C.
 21 1342) with respect to which proceedings are insti-
 22 tuted by the corporation on or after such date.

1 **CHAPTER 2—ERISA ENFORCEMENT**

2 **SEC. 521. SHORT TITLE.**

3 This chapter may be cited as the “Pension Audit Im-
4 provement Act of 1999”.

5 **SEC. 522. REPEAL OF LIMITED SCOPE AUDIT.**

6 (a) IN GENERAL.—Section 103(a)(3) (29 U.S.C.
7 1023(a)(3)) is amended by striking subparagraph (C) and
8 by redesignating subparagraph (D) as subparagraph (C).

9 (b) CONFORMING AMENDMENTS.—

10 (1) Section 103(a)(3)(A) (29 U.S.C.
11 1023(a)(3)(A)) is amended by striking “Except as
12 provided in subparagraph (C), the” and inserting
13 “The”.

14 (2) Section 104(a)(5)(A) (29 U.S.C.
15 1024(a)(5)(A)) is amended by striking “section
16 103(a)(3)(D)” and inserting “section 103(a)(3)(C)”.

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall apply with respect to opinions required
19 under section 103(a)(3)(A) of the Employee Retirement
20 Income Security Act of 1974 for plan years beginning on
21 or after January 1 of the calendar year following the date
22 of the enactment of this Act.

1 **SEC. 523. REPORTING AND ENFORCEMENT REQUIREMENTS**
 2 **FOR EMPLOYEE BENEFIT PLANS.**

3 (a) IN GENERAL.—Part 1 of subtitle B of title I (29
 4 U.S.C. 1021 et seq.) is amended—

5 (1) by redesignating section 111 as section 112,
 6 and

7 (2) by inserting after section 110 the following
 8 new section:

9 “DIRECT REPORTING OF CERTAIN EVENTS

10 “SEC. 111. (a) REQUIRED NOTIFICATIONS.—

11 “(1) NOTIFICATIONS BY PLAN ADMINIS-
 12 TRATOR.—The administrator of an employee benefit
 13 plan shall, within 5 business days after the adminis-
 14 trator determines that there is evidence (or after the
 15 administrator is notified under paragraph (2)) that
 16 an irregularity may have occurred with respect to
 17 the plan—

18 “(A) notify the Secretary of the irregular-
 19 ity in writing; and

20 “(B) furnish a copy of such notification to
 21 the accountant who is currently engaged under
 22 section 103(a)(3)(A).

23 “(2) NOTIFICATIONS BY ACCOUNTANT.—

24 “(A) IN GENERAL.—An accountant en-
 25 gaged by the administrator of an employee ben-
 26 efit plan under section 103(a)(3)(A) shall, with-

1 in 5 business days after the accountant in con-
 2 nection with such engagement determines that
 3 there is evidence that an irregularity may have
 4 occurred with respect to the plan—

5 “(i) notify the plan administrator of
 6 the irregularity in writing; or

7 “(ii) if the accountant determines that
 8 there is evidence that the irregularity may
 9 have involved an individual who is the plan
 10 administrator or who is a senior official of
 11 the plan administrator, notify the Sec-
 12 retary of the irregularity in writing.

13 “(B) NOTIFICATION UPON FAILURE OF
 14 PLAN ADMINISTRATOR TO NOTIFY.—If an ac-
 15 countant who has provided notification to the
 16 plan administrator pursuant to subparagraph
 17 (A)(i) does not receive a copy of the administra-
 18 tor’s notification to the Secretary required
 19 under paragraph (1)(B) within the 5-business
 20 day period specified therein, the accountant
 21 shall furnish to the Secretary a copy of the ac-
 22 countant’s notification made to the plan admin-
 23 istrator on the next business day following such
 24 period.

25 “(3) IRREGULARITY DEFINED.—

1 “(A) For purposes of this subsection, the
2 term ‘irregularity’ means—

3 “(i) a theft, embezzlement, or a viola-
4 tion of section 664 of title 18, United
5 States Code (relating to theft or embezzle-
6 ment from an employee benefit plan);

7 “(ii) an extortion or a violation of sec-
8 tion 1951 of such title 18 (relating to in-
9 terference with commerce by threats or vi-
10 olence);

11 “(iii) a bribery, a kickback, or a viola-
12 tion of section 1954 of such title 18 (relat-
13 ing to offer, acceptance, or solicitation to
14 influence operations of an employee benefit
15 plan);

16 “(iv) a violation of section 1027 of
17 such title 18 (relating to false statements
18 and concealment of facts in relation to em-
19 ployer benefit plan records); or

20 “(v) a violation of section 411, 501, or
21 511 of this title (relating to criminal viola-
22 tions).

23 “(B) The term ‘irregularity’ shall not in-
24 clude any act or omission described in this
25 paragraph involving less than \$1,000 unless

1 there is reason to believe that the act or omis-
 2 sion may bear on the integrity of plan manage-
 3 ment.

4 “(b) NOTIFICATION UPON TERMINATION OF EN-
 5 GAGEMENT OF ACCOUNTANT.—

6 “(1) NOTIFICATION BY PLAN ADMINIS-
 7 TRATOR.—Within 5 business days after the termi-
 8 nation of an engagement for auditing services under
 9 section 103(a)(3)(A) with respect to an employee
 10 benefit plan, the administrator of such plan shall—

11 “(A) notify the Secretary in writing of
 12 such termination, giving the reasons for such
 13 termination; and

14 “(B) furnish the accountant whose engage-
 15 ment was terminated with a copy of the notifi-
 16 cation sent to the Secretary.

17 “(2) NOTIFICATION BY ACCOUNTANT.—If the
 18 accountant referred to in paragraph (1)(B) has not
 19 received a copy of the administrator’s notification to
 20 the Secretary as required under paragraph (1)(B),
 21 or if the accountant disagrees with the reasons given
 22 in the notification of termination of the engagement
 23 for auditing services, the accountant shall notify the
 24 Secretary in writing of the termination, giving the

1 reasons for the termination, within 10 business days
 2 after the termination of the engagement.

3 “(c) DETERMINATION OF PERIODS REQUIRED FOR
 4 NOTIFICATION.—In determining whether a notification re-
 5 quired under this section with respect to any act or omis-
 6 sion has been made within the required number of busi-
 7 ness days—

8 “(1) the day on which such act or omission be-
 9 gins shall not be included; and

10 “(2) Saturdays, Sundays, and legal holidays
 11 shall not be included.

12 For purposes of this subsection, the term ‘legal holiday’
 13 means any Federal legal holiday and any other day ap-
 14 pointed as a holiday by the State in which the person re-
 15 sponsible for making the notification principally conducts
 16 his business.

17 “(d) IMMUNITY FOR GOOD FAITH NOTIFICATION.—
 18 Except as provided in this Act, no accountant or plan ad-
 19 ministrator shall be liable to any person for any finding,
 20 conclusion, or statement made in any notification made
 21 pursuant to subsection (a)(2) or (b)(2), or pursuant to any
 22 regulations issued thereunder, if such finding, conclusion,
 23 or statement is made in good faith.”

24 (b) CIVIL PENALTY.—

1 (1) IN GENERAL.—Section 502(c) (29 U.S.C.
2 1132(c)) is amended by redesignating paragraph (7)
3 as paragraph (8) and by inserting after paragraph
4 (6) the following new paragraph:

5 “(7)(A) The Secretary may assess a civil penalty of
6 up to \$100,000 against any administrator who fails to
7 provide the Secretary with any notification as required
8 under section 111.

9 “(B) The Secretary may assess a civil penalty of up
10 to \$100,000 against any accountant who knowingly and
11 willfully fails to provide the Secretary with any notification
12 as required under section 111.”

13 (2) CONFORMING AMENDMENT.—Section
14 502(a)(6) (29 U.S.C. 1132(a)(6)) is amended by
15 striking “or (6)” and inserting “(6), or (7)”.

16 (c) CLERICAL AMENDMENTS.—

17 (1) Section 514(d) (29 U.S.C. 1144(d)) is
18 amended by striking “111” and inserting “112”.

19 (2) The table of contents in section 1 is amend-
20 ed by striking the item relating to section 111 and
21 inserting the following new items:

“Sec. 111. Direct reporting of certain events.

“Sec. 112. Repeal and effective date.”

22 (d) EFFECTIVE DATE.—The amendments made by
23 this section shall apply with respect to any irregularity or
24 termination of engagement described in such amendments

1 only if the 5-day period described in such amendments in
 2 connection with such irregularity or termination com-
 3 mences at least 90 days after the date of the enactment
 4 of this Act.

5 **SEC. 524. ADDITIONAL REQUIREMENTS FOR QUALIFIED**
 6 **PUBLIC ACCOUNTANTS.**

7 (a) IN GENERAL.—Section 103(a)(3)(C) (29 U.S.C.
 8 1023(a)(3)(C)), as redesignated by section 522, is
 9 amended—

10 (1) by inserting “(i)” after “(C)”,

11 (2) by inserting “, with respect to any engage-
 12 ment of an accountant under subparagraph (A)”
 13 after “means”,

14 (3) by redesignating clauses (i), (ii), and (iii) as
 15 subclauses (I), (II), and (III), respectively,

16 (4) by striking the period at the end of sub-
 17 clause (III) (as so redesignated) and inserting a
 18 semicolon,

19 (5) by adding after subclause (III) (as so redesi-
 20 gnated), and flush with clause (i), the following:

21 “but only if such person meets the requirements of clauses
 22 (ii) and (iii) with respect to such engagement.”, and

23 (6) by adding at the end the following new
 24 clauses:

1 “(ii) A person meets the requirements of this clause
 2 with respect to an engagement of such person as an ac-
 3 countant under subparagraph (A) if such person—

4 “(I) has in operation an appropriate internal
 5 quality control system;

6 “(II) has undergone a qualified external quality
 7 control review of the person’s accounting and audit-
 8 ing practices, including such practices relevant to
 9 employee benefit plans (if any), during the 3-year
 10 period immediately preceding such engagement; and

11 “(III) has completed, within the 2-year period
 12 immediately preceding such engagement, at least 80
 13 hours of continuing education or training which con-
 14 tributes to the accountant’s professional proficiency,
 15 at least 20 hours of which have been completed dur-
 16 ing the 1-year period immediately preceding the en-
 17 gagement, and at least 16 hours of which relate to
 18 employee benefit plan matters.

19 “(iii) A person meets the requirements of this clause
 20 with respect to an engagement of such person as an ac-
 21 countant under subparagraph (A) if such person meets
 22 such additional requirements and qualifications of regula-
 23 tions which the Secretary deems necessary to ensure the
 24 quality of plan audits.

1 “(iv) For purposes of clause (ii)(II), an external qual-
 2 ity control review shall be treated as qualified with respect
 3 to a person referred to in clause (ii) if—

4 “(I) such review is performed in accordance
 5 with the requirements of external quality control re-
 6 view programs of recognized auditing standard-set-
 7 ting bodies, as determined under regulations of the
 8 Secretary; and

9 “(II) in the case of any such person who has,
 10 during the peer review period, conducted one or
 11 more previous audits of employee benefit plans, such
 12 review includes the review of an appropriate number
 13 (determined as provided in such regulations, but in
 14 no case less than one) of plan audits in relation to
 15 the scale of such person’s auditing practice.

16 The Secretary shall issue the regulations under subclause
 17 (I) no later than December 31, 1999.”

18 (b) EFFECTIVE DATES.—

19 (1) IN GENERAL.—Except as provided in para-
 20 graph (2), the amendments made by this section
 21 shall apply with respect to plan years beginning on
 22 or after the date which is 3 years after the date of
 23 the enactment of this Act.

24 (2) RESTRICTIONS ON CONDUCTING EXAMINA-
 25 TIONS.—Clause (iii) of section 103(a)(3)(C) of the

1 Employee Retirement Income Security Act of 1974
 2 (as added by subsection (a)(6)) shall take effect on
 3 the date of enactment of this Act.

4 **SEC. 525. CLARIFICATION OF CIVIL PENALTY FOR BREACH**
 5 **OF FIDUCIARY RESPONSIBILITY.**

6 (a) IMPOSITION AND AMOUNT OF PENALTY MADE
 7 DISCRETIONARY.—Section 502(l)(1) (29 U.S.C.
 8 1132(l)(1)) is amended—

9 (1) by striking “shall” and inserting “may”,
 10 and

11 (2) by striking “equal to” and inserting “not
 12 greater than”.

13 (b) APPLICABLE RECOVERY AMOUNT.—Section
 14 502(l)(2) (29 U.S.C. 1132(l)(2)) is amended to read as
 15 follows:

16 “(2) For purposes of paragraph (1), the term ‘appli-
 17 cable recovery amount’ means any amount which is recov-
 18 ered from (or on behalf of) any fiduciary or other person
 19 with respect to a breach or violation described in para-
 20 graph (1) on or after the 30th day following receipt by
 21 such fiduciary or other person of written notice from the
 22 Secretary of the violation, whether paid voluntarily or by
 23 order of a court in a judicial proceeding instituted by the
 24 Secretary under subsection (a)(2) or (a)(5). The Secretary

1 may, in the Secretary's sole discretion, extend the 30-day
2 period described in the preceding sentence.”

3 (c) OTHER RULES.—Section 502(l) (29 U.S.C.
4 1132(l)) is amended by adding at the end the following
5 new paragraphs:

6 “(5) A person shall be jointly and severally liable for
7 the penalty described in paragraph (1) to the same extent
8 that such person is jointly and severally liable for the ap-
9 plicable recovery amount on which the penalty is based.

10 “(6) No penalty shall be assessed under this sub-
11 section unless the person against whom the penalty is as-
12 sessed is given notice and opportunity for a hearing with
13 respect to the violation and applicable recovery amount.”

14 (d) EFFECTIVE DATES.—

15 (1) IN GENERAL.—The amendments made by
16 this section shall apply to any breach of fiduciary re-
17 sponsibility or other violation of part 4 of subtitle B
18 of title I of the Employee Retirement Income Secu-
19 rity Act of 1974 occurring on or after the date of
20 enactment of this Act.

21 (2) TRANSITION RULE.—In applying the
22 amendment made by subsection (b) (relating to ap-
23 plicable recovery amount), a breach or other viola-
24 tion occurring before the date of the enactment of
25 this Act which continues after the 180th day after

1 such date (and which may have been discontinued
2 at any time during its existence) shall be treated as
3 having occurred after such date of enactment.

4 **TITLE VI—EXPANDED INDIVID-**
5 **UAL RETIREMENT ACCOUNTS**
6 **TO INCREASE COVERAGE AND**
7 **PORTABILITY**

8 **Subtitle A—Retirement Savings**
9 **Incentives**

10 **SEC. 601. INCREASE IN INCOME LIMITATIONS.**

11 (a) IN GENERAL.—Clauses (i) and (ii) of subpara-
12 graph (B) of section 219(g)(3) of the Internal Revenue
13 Code of 1986 (relating to adjusted gross income) are
14 amended to read as follows:

15 “(i) In the case of a taxpayer filing a
16 joint return:

“For taxable years beginning in:	The applicable dollar amount is:
1999	\$60,000
2000	\$70,000
2001 and thereafter	\$80,000.

17 “(ii) In the case of any other taxpayer
18 (other than a married individual filing a
19 separate return):

“For taxable years beginning in:	The applicable dollar amount is:
1999	\$35,000
2000	\$45,000
2001 and thereafter	\$50,000.”

1 (b) PHASEOUT OF LIMITATIONS.—Clause (ii) of sec-
 2 tion 219(g)(2)(A) is amended—

3 (1) by striking “\$10,000” and inserting “an
 4 amount equal to 10 times the dollar amount applica-
 5 ble for the taxable year under subsection (b)(1)(A)”,
 6 and

7 (2) by striking “(\$20,000 in the case of a joint
 8 return for a taxable year beginning after 2006)”.

9 (c) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to taxable years beginning after
 11 December 31, 1998.

12 **SEC. 602. COORDINATION OF IRA DEDUCTION LIMIT WITH**
 13 **ELECTIVE DEFERRAL LIMIT.**

14 (a) IN GENERAL.—Section 219(b) of the Internal
 15 Revenue Code of 1986 (relating to maximum amount of
 16 deduction) is amended by adding at the end the following
 17 new paragraph:

18 “(5) COORDINATION WITH ELECTIVE DEFER-
 19 RAL LIMIT.—The amount determined under para-
 20 graph (1) or subsection (c) with respect to any indi-
 21 vidual for any taxable year shall not exceed the ex-
 22 cess (if any) of—

23 “(A) the limitation applicable for the tax-
 24 able year under section 402(g)(1), over

1 “(B) the elective deferrals (as defined in
 2 section 402(g)(3)) of such individual for such
 3 taxable year.”

4 (b) CONFORMING AMENDMENT.—Section 219(c) of
 5 such Code is amended by adding at the end the following
 6 new paragraph:

7 “(3) CROSS REFERENCE.—

“For reduction in paragraph (2) amount, see sub-
 section (b)(5).”

8 (c) EFFECTIVE DATE.—The amendments made by
 9 this section shall apply to taxable years beginning after
 10 December 31, 1998.

11 **Subtitle B—Distributions and** 12 **Investments**

13 **SEC. 611. DISTRIBUTIONS FROM IRAS MAY BE USED WITH-**
 14 **OUT ADDITIONAL TAX TO PAY FINANCIALLY**
 15 **DEVASTATING MEDICAL EXPENSES, OR BY**
 16 **THE UNEMPLOYED.**

17 (a) CERTAIN LINEAL DESCENDANTS AND ANCES-
 18 TORS TREATED AS DEPENDENTS AND LONG-TERM CARE
 19 SERVICES TREATED AS MEDICAL CARE.—Subparagraph
 20 (B) of section 72(t)(2) of the Internal Revenue Code of
 21 1986 (relating to medical expenses) is amended by strik-
 22 ing “medical care” and all that follows and inserting
 23 “medical care determined—

1 “(i) without regard to whether the
2 employee itemizes deductions for such tax-
3 able year, and

4 “(ii) in the case of an individual re-
5 tirement plan—

6 “(I) by treating such employee’s
7 dependents as including all children,
8 grandchildren, and ancestors of the
9 employee or such employee’s spouse
10 and

11 “(II) by treating qualified long-
12 term care services (as defined in para-
13 graph (9)) as medical care for pur-
14 poses of this subparagraph.”

15 (b) DEFINITION OF LONG-TERM CARE SERVICES.—
16 Section 72(t) of such Code is amended by adding at the
17 end the following new paragraph:

18 “(9) QUALIFIED LONG-TERM CARE SERVICES.—

19 For purposes of paragraph (2)(B)—

20 “(A) IN GENERAL.—The term ‘qualified
21 long-term care services’ means necessary diag-
22 nostic, curing, mitigating, treating, preventive,
23 therapeutic, and rehabilitative services, and
24 maintenance and personal care services (wheth-

er performed in a residential or nonresidential
setting) which—

“(i) are required by an individual during any period the individual is an incapacitated individual (as defined in subparagraph (B)),

“(ii) have as their primary purpose—

“(I) the provision of needed assistance with 1 or more activities of daily living (as defined in section 7702B(c)(2)(B)), or

“(II) protection from threats to health and safety due to severe cognitive impairment, and

“(iii) are provided pursuant to a continuing plan of care prescribed by a licensed professional (as defined in subparagraph (C)).

“(B) INCAPACITATED INDIVIDUAL.—The term ‘incapacitated individual’ means any individual who—

“(i) is unable to perform, without substantial assistance from another individual (including assistance involving cueing or

1 substantial supervision), at least 2 activi-
2 ties of daily living (as so defined), or

3 “(ii) has severe cognitive impairment
4 as defined by the Secretary in consultation
5 with the Secretary of Health and Human
6 Services.

7 Such term shall not include any individual oth-
8 erwise meeting the requirements of the preced-
9 ing sentence unless, within the preceding 12-
10 month period, a licensed professional has cer-
11 tified that such individual meets such require-
12 ments.

13 “(C) LICENSED PROFESSIONAL.—The
14 term ‘licensed professional’ means—

15 “(i) a physician or registered profes-
16 sional nurse, or

17 “(ii) any other individual who meets
18 such requirements as may be prescribed by
19 the Secretary after consultation with the
20 Secretary of Health and Human Services.

21 “(D) CERTAIN SERVICES NOT IN-
22 CLUDED.—The term ‘qualified long-term care
23 services’ shall not include any services provided
24 to an individual—

1 “(i) by a relative (directly or through
 2 a partnership, corporation, or other entity)
 3 unless the relative is a licensed professional
 4 with respect to such services, or

5 “(ii) by a corporation or partnership
 6 which is related (within the meaning of
 7 section 267(b) or 707(b)) to the individual.

8 For purposes of this subparagraph, the term
 9 ‘relative’ means an individual bearing a rela-
 10 tionship to the individual which is described in
 11 paragraphs (1) through (8) of section 152(a).”

12 (c) DISTRIBUTIONS FOR CERTAIN UNEMPLOYED IN-
 13 DIVIDUALS.—Paragraph (2) of section 72(t) of the Inter-
 14 nal Revenue Code of 1986 is amended by adding at the
 15 end the following new subparagraph:

16 “(G) DISTRIBUTIONS TO UNEMPLOYED IN-
 17 DIVIDUALS.—A distribution from an individual
 18 retirement plan to an individual after separa-
 19 tion from employment, if—

20 “(i) such individual has received un-
 21 employment compensation for 12 consecu-
 22 tive weeks under any Federal or State un-
 23 employment compensation law by reason of
 24 such separation, and

1 “(ii) such distributions are made dur-
 2 ing any taxable year during which such un-
 3 employment compensation is paid or the
 4 succeeding taxable year.”

5 (d) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply to payments and distributions after
 7 December 31, 1998.

8 **SEC. 612. CONTRIBUTIONS MUST BE HELD AT LEAST 5**
 9 **YEARS IN CERTAIN CASES.**

10 (a) IN GENERAL.—Section 72(t) of the Internal Rev-
 11 enue Code of 1986 (relating to 10-percent additional tax
 12 on early distributions from qualified retirement plans), as
 13 amended by section 611(b), is amended by adding at the
 14 end the following new paragraph:

15 “(10) CERTAIN CONTRIBUTIONS MUST BE HELD
 16 5 YEARS.—

17 “(A) IN GENERAL.—Paragraph (2)(A)(i)
 18 shall not apply to any amount distributed out
 19 of an individual retirement plan (other than a
 20 Roth IRA) which is allocable to contributions
 21 made to the plan during the 5-year period end-
 22 ing on the date of such distribution (and earn-
 23 ings on such contributions).

24 “(B) ORDERING RULE.—For purposes of
 25 this paragraph—

1 “(i) FIRST-IN, FIRST-OUT RULE.—

2 Distributions shall be treated as having
3 been made—

4 “(I) first from the earliest con-
5 tribution (and earnings allocable
6 thereto) remaining in the account at
7 the time of the distribution, and

8 “(II) then from other contribu-
9 tions (and earnings allocable thereto)
10 in the order in which made.

11 “(ii) ALLOCATION OF EARNINGS.—
12 Earnings shall be allocated to contribu-
13 tions in such manner as the Secretary may
14 prescribe.

15 “(iii) AGGREGATIONS OF CONTRIBU-
16 TIONS.—Except as provided by the Sec-
17 retary, for purposes of this
18 subparagraph—

19 “(I) all contributions made dur-
20 ing the same taxable year may be
21 treated as 1 contribution, and

22 “(II) all contributions made be-
23 fore the first day of the 5-year period
24 ending on the day before any distribu-
25 tion may be treated as 1 contribution.

1 “(C) SPECIAL RULE FOR ROLLOVERS.—

2 “(i) PENSION PLANS.—Subparagraph
3 (A) shall not apply to distributions out of
4 an individual retirement plan which are al-
5 locable to rollover contributions to which
6 section 402(c), 403(a)(4), or 403(b)(8) ap-
7 plied.

8 “(ii) CONTRIBUTION PERIOD.—For
9 purposes of subparagraph (A), amounts
10 shall be treated as having been held by a
11 plan during any period such contributions
12 were held (or are treated as held under
13 this clause) by any individual retirement
14 plan from which transferred.

15 “(D) ROTH IRA.—For rules applicable to
16 Roth IRAs under section 408A, see subsection
17 (d)(3)(F) of such section.”

18 (b) EFFECTIVE DATE.—The amendment made by
19 this section shall apply to contributions (and earnings allo-
20 cable thereto) which are made after December 31, 1998.

○